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January 23, 2020

VIA U.S. CERTIFIED MAIL

USAA Federal Savings Bank
10750 W. IH 10
San Antonio, TX 78288

Re: Notice of Service; *Vitus Energy LLC v. USAA Federal Savings Bank*;
Case No. 3AN-20-04418CI

To Whom It May Concern:

Davis Wright Tremaine LLP represents Vitus Energy LLC ("Vitus") in the above-referenced matter. Because USAA Federal Savings Bank ("USAA") does business in the State of Alaska but has failed to register to do business and maintain a registered agent as required by AS 10.06.753, the enclosed Summons, Complaint and Case Description Form have been served upon the Commissioner of the State of Alaska Department of Commerce, Community and Economic Development as authorized by AS 10.06.175(b).

A copy of this letter and copies the Summons, Complaint and Case Description Form are also being sent to USAA's registered agent in Texas:

Corporation Service Company d/b/a
CSC – Lawyers Incorporating Service Company
211 E. 7th Street, Suite 620
Austin, TX 78701-3218

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read 'Vanessa R. Norman', written over a horizontal line.

Vanessa R. Norman

Enclosures (as noted)

4815-3255-4930v.1 0090817-000034

Anchorage | Bellevue | Los Angeles | New York
Portland | San Francisco | Seattle | Washington, D.C.

STATE OF ALASKA
JAN 22 2020

2020 JAN 22 PM 4:38

CLERK OF THE TRIAL COURT

BY
CLERK

Jon S. Dawson, ABA #8406022
Vanessa R. Norman, ABA #1211106
DAVIS WRIGHT TREMAINE LLP
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Attorneys for Vitus Energy LLC

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

VITUS ENERGY LLC)

Plaintiff,)

vs.)

Case No. 3AN-20-04418 CI

USAA FEDERAL SAVINGS BANK)

Defendant.)

COMPLAINT

Plaintiff Vitus Energy LLC ("Vitus"), by and through its attorneys Davis Wright Tremaine LLP, files this complaint against defendant USAA Federal Savings Bank ("USAA"), and alleges as follows:

I. Parties, Jurisdiction, and Venue

1. Vitus is an Alaska limited liability company with its principal place of business in Anchorage, Alaska.

2. Upon information and belief, USAA is federal savings bank with its

1 principal place of business in Texas.

2 3. USAA is a federal savings bank that does business in the State of Alaska.

3 4. This court has jurisdiction over the present matters pursuant to AS
4 22.10.020.

5 5. Venue is proper in the Third Judicial District at Anchorage

6 **II. Factual Allegations**

7 6. Vitus sells fuel and provides various fuel related services to customers
8 around the State of Alaska, some of whom pay Vitus for its fuel and services by check.

9 7. Vitus employed Sharron Johnson, as a Documents Control Administrator
10 (“Johnson”) from the period of July 2, 2019 to January 15, 2020.

11 8. During the period Johnson was employed by Vitus, Johnson took an
12 undetermined number of checks made payable to Vitus (collectively the “Vitus Checks”)
13 and electronically deposited them into her personal bank account (“Johnson’s USAA
14 Account”).

15 9. Vitus was named as payee on the Vitus Checks.

16 10. The Vitus Checks were endorsed “For Deposit Only.”

17 11. In depositing the Vitus Checks into Johnson’s USAA Account, Johnson
18 acted without Vitus’s authorization or knowledge.

19 12. USAA wrongly accepted the Vitus Checks for deposit into Johnson’s
20 USAA Account.
21

13. USAA admits it accepted Vitus Checks totaling at least \$87,149.28 for deposit into Johnson's USAA Account. However, despite repeated demand, USAA has refused to provide Vitus with information and documentation that would allow Vitus to determine the total number and dollar amount of Vitus Checks that were wrongly accepted by USAA for deposit into Johnson's USAA Account.

14. Despite repeated demand, USAA has refused to pay Vitus the amount of the Vitus Checks that USAA accepted for deposit into Johnson's USAA Account.

III. First Cause of Action – Violation of the Uniform Commercial Code (“UCC”), AS 45.03.206(c)(2) and AS 45.03.420(b)

15. Vitus incorporates by reference the allegations set forth in paragraphs 1 through 14.

16. By depositing Vitus Checks endorsed “For Deposit Only” into Johnson's USAA Account, USAA converted the checks and violated AS 45.03.206(c)(2) of the UCC by failing to pay the Vitus Checks' proceeds to Vitus or apply them consistently with the endorsements on the checks.

17. By depositing Vitus Checks endorsed “For Deposit Only” into Johnson's USAA Account, USAA converted the checks and violated AS 45.03.420(b) of the UCC by making payment to a person not entitled to enforce the Vitus Checks or receive payment for the Vitus Checks.

18. USAA is liable to Vitus for damages for violation of AS 45.03.206(c)(2) and AS 45.03.420(b) of the UCC in the aggregate amount of at least \$87,149.28.

IV. Second Cause of Action – Violation of Alaska’s Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 et seq. (“UTPA”)

19. VITUS incorporates by reference the allegations set forth in paragraphs 1 through 18.

20. By providing banking services to Alaska residents, USAA is conducting trade or commerce in the State of Alaska.

21. By depositing the Vitus Checks into Johnson’s USAA Account in violation of AS 45.03.206(c)(2) and AS 45.03.420(b) of the UCC, by refusing to provide information and documentation that would allow Vitus to determine the total number and dollar amount of Vitus Checks that were wrongly accepted by USAA for deposit into Johnson’s USAA Account, and by refusing to pay Vitus the amount of the Vitus Checks that USAA accepted for deposit into Johnson’s USAA Account, USAA engaged in unfair trade practices in violation AS 45.50.471 of the UTPA.

22. Vitus was damaged by USAA’s unfair trade practices in the amount of at least \$87,149.28.

23. Pursuant to AS 45.50.531(a) of the UTPA, USAA is liable to Vitus for treble damages.

24. Pursuant to AS 45.50.537(a) of the UTPA, USAA is liable to Vitus for full reasonable attorneys’ fees in bringing this action.

Davis Wright Tremaine LLP
LAW OFFICES
188 West Northern Lights Blvd., Ste. 1100
Anchorage, Alaska 99503-3985
(907) 257-5300 • Fax: (907) 257-5399

V.

PRAYER FOR RELIEF

VITUS therefore asks that this court enter judgment in its favor and prays for relief as follows:

- A. Judgment against USAA for the full amount of all damages sustained by VITUS as a result of USAA's violations of the UCC and the UTPA;
- B. For an award of treble damages under the UTPA;
- C. For an award of attorneys' fees and costs, including without limitation an award full reasonable attorneys' fees and costs under the UTPA
- D. Pre- and post-judgment interest at the statutory rate; and
- E. For such other and further relief as this court deems just and equitable.

DATED this 22nd day of January, 2020.

DAVIS WRIGHT TREMAINE LLP
Attorneys for VITUS Energy LLC.

By: 

Jon S. Dawson, ABA ##8406022

Vanessa R. Norman, ABA #1211106

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

VITUS ENERGY LLC

Plaintiff(s),
vs.

USAA FEDERAL SAVINGS BANK

Defendant(s).

CASE NO. 3AN-20- 04418 CI

**SUMMONS AND
NOTICE TO BOTH PARTIES
OF JUDICIAL ASSIGNMENT**

To Defendant: USAA Federal Savings Bank, a federal savings bank with no registered agent in the State of Alaska, through the Commissioner for the Department of Commerce, Community, and Economic Development. You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 825 W. 4th Ave., Anchorage, Alaska 99501 within 20 days* after the day you receive this summons. In addition, a copy of your answer must be sent to the plaintiff's attorney or plaintiff (if unrepresented) Jon Dawson and Vanessa Norman, whose address is: Davis Wright Tremaine LLP, 188 W. Northern Lights Blvd., Ste. 1100, Anchorage, AK 99503.

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at <https://public.courts.alaska.gov/web/forms/docs/tf-955.pdf> to inform the court. - OR - If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

TO: Plaintiff and Defendant

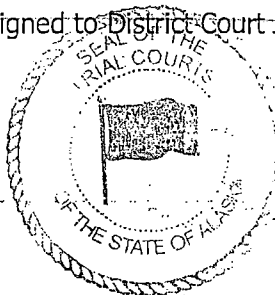
You are hereby given notice that:

☒ This case has been assigned to Superior Court Judge Guidi
and to a magistrate judge.

☐ This case has been assigned to District Court Judge _____

CLERK OF COURT

1/22/20
Date



By: Colein

Deputy Clerk

I certify that on 1/22/20 a copy of this Summons was ☐ mailed ☒ given to

☐ plaintiff ☒ plaintiff's counsel along with a copy of the
☐ Domestic Relations Procedural Order ☐ Civil Pre-Trial Order
to serve on the defendant with the summons.

Deputy Clerk CS

* The State or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

CIV-100 ANCH (10/17)(cs)
SUMMONS

Civil Rules 4, 5, 12, 42(c), 55

CASE DESCRIPTION – SUPERIOR COURT

Case Number: 3AN-20-04418 CI

Type of Action	For Court Use Only	
Check the box that best describes the case. Mark one box only. For district court cases, use form CIV-125D.	Case Type	Action Code
Domestic Relations		
<input type="checkbox"/> Divorce With Children (or Pregnant)	Div or Cust w/Children	CISDVC
<input type="checkbox"/> Divorce Without Children	Divorce Without Children	CISDIV
<input type="checkbox"/> Uncontested Divorce With Children (or Pregnant)	Div or Cust w/Children	CISUDVC
<input type="checkbox"/> Uncontested Divorce Without Children	Divorce Without Children	CISUDIV
<input type="checkbox"/> Custody (Unmarried Parents)	Div or Cust w/Children	CISCUS
<input type="checkbox"/> Uncontested Custody (Unmarried Parents)	Div or Cust w/Children	CISUCUS
<input type="checkbox"/> Visitation by Person Other than Parent	Domestic Relations Other	CIVIS
<input type="checkbox"/> Property Division – Unmarried Partners	Domestic Relations Other	CISPROP
<input type="checkbox"/> Legal Separation With Children (or Pregnant)	Legal Separation	CICLS
<input type="checkbox"/> Legal Separation Without Children	Legal Separation	CISLS
<input type="checkbox"/> Annulment	Domestic Relations Other	CIANNUL
<input type="checkbox"/> Uncontested Legal Separation with Children (or Pregnant)	Legal Separation	CIUCLS
<input type="checkbox"/> Uncontested Legal Separation Without Children	Legal Separation	CIUSLS
<input type="checkbox"/> Paternity - Establishment	Domestic Relations Other	CISPAT
<input type="checkbox"/> Paternity - Disestablishment	Domestic Relations Other	CIDPAT
<input type="checkbox"/> Genetic Testing – Failure to Comply with Order for Testing	Domestic Relations Other	CIOSCP
<input type="checkbox"/> Administrative Child Support Order – Modification or Enforcement	Domestic Relations Other	CIPCS
<input type="checkbox"/> PFD or Native Dividend Case	Domestic Relations Other	CIPND
<input type="checkbox"/> Foreign Support Order - Registration, Modification or Enforcement under AS 25.25	Domestic Relations Other	CIUIFSA
<input type="checkbox"/> Foreign Custody Order – Registration, Modification or Enforcement under AS 25.30	Domestic Relations Other	DR483
<input type="checkbox"/> Both Foreign Custody & Support Order – Registration, Modification or Enforcement under AS 25.30 and AS 25.25	Domestic Relations Other	CIFCS
<input type="checkbox"/> Foreign Domestic Relations Order (Not Custody or Support) – Registration, Modification or Enforcement	Domestic Relations Other	CIDRFJ
Landlord/Tenant		
<input type="checkbox"/> Eviction (May Include Rent or Damages)	Eviction-Superior Court	CISFED
<input type="checkbox"/> Other Landlord/Tenant (No Eviction)	Civil Superior Court	CISLT
Debt/Contract		
<input type="checkbox"/> Debt Collection	Civil Superior Court	CISDEB
<input type="checkbox"/> Claim by Buyer Against Seller of Goods/Services	Civil Superior Court	CISCLAIM
<input type="checkbox"/> Employment – Discrimination	Civil Superior Court	CISEMPD
<input type="checkbox"/> Employment – Other Than Discrimination	Civil Superior Court	CISEMP
<input type="checkbox"/> Other Contract	Civil Superior Court	CISOCT
Real Property Actions		
<input type="checkbox"/> Condemnation	Civil Superior Court	CISCNDM
<input type="checkbox"/> Foreclosure	Civil Superior Court	CISFOR
<input type="checkbox"/> Quiet Title	Civil Superior Court	CISQIT
<input type="checkbox"/> Real Property Tax Foreclosure	Superior Court Misc Petition	CISTAX
<input type="checkbox"/> Other Real Estate Matter	Civil Superior Court	CISREM
Foreign Judgment		
<input type="checkbox"/> Registration of Foreign Judgment – SEE DOMESTIC RELATIONS FOR FOREIGN SUPPORT/CUSTODY ORDERS	Foreign Judgment Superior Ct	CISFOJ

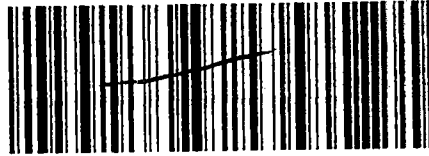
CASE DESCRIPTION – SUPERIOR COURT

Case Number: 3AN-20- 04418 CI

Type of Action	For Court Use Only	
Check the box that best describes the case. Mark one box only. For district court cases, use form CIV-125D.	Case Type	Action Code
Tort		
<input type="checkbox"/> Wrongful Death	Civil Superior Court	CISPID
<input type="checkbox"/> Automobile Tort (But Not Wrongful Death)	Civil Superior Court	CISIDA
<input type="checkbox"/> Claim Against Owner of Real Property for Personal Injury	Civil Superior Court	CISPIO
<input type="checkbox"/> Product Liability	Civil Superior Court	CISPL
<input type="checkbox"/> Intentional Tort (e.g., assault, battery, vandalism)	Civil Superior Court	CISIT
<input type="checkbox"/> Slander/Libel/Defamation	Civil Superior Court	CISSLD
<input type="checkbox"/> Other Tort	Civil Superior Court	CISIDO
<input type="checkbox"/> Approval of Minor Settlement – Civil Petition <i>May also be filed as probate case.</i>	Superior Court Misc Petition	CISPET
Malpractice		
<input type="checkbox"/> Legal Malpractice	Civil Superior Court	CISLMP
<input type="checkbox"/> Medical Malpractice	Civil Superior Court	CISMMP
<input type="checkbox"/> Other Malpractice	Civil Superior Court	CISOMP
Other Civil		
<input type="checkbox"/> Election Contest or Recount Appeal	Civil Superior Court	CISELE
<input type="checkbox"/> Change of Name - Adult	Change of Name	CICON
<input type="checkbox"/> Change of Name - Minor	Change of Name	CICONM
<input type="checkbox"/> Confession of Judgment	Civil Superior Court	CISCCONF
<input type="checkbox"/> Structured Settlement – AS 09.60.200	Superior Court Misc Petition	CISSS
<input type="checkbox"/> Administrative Agency Proceeding – Request for Court Assistance	Superior Court Misc Petition	CISWRNT
<input type="checkbox"/> Arbitration - Action Under Uniform Arbitration Act	Civil Superior Court	CISAP
<input type="checkbox"/> Fraud	Civil Superior Court	CISFRAUD
<input checked="" type="checkbox"/> Unfair Trade Practice and Consumer Protection	Civil Superior Court Clerk: Issue form CIV-128	CISUTP
<input type="checkbox"/> Writ of Habeas Corpus	Civil Superior Court	CIWHC
<input type="checkbox"/> Fish & Game - Abatement & Forfeiture of Equipment	Superior Court Misc Petition	CISAF
<input type="checkbox"/> Appointment of Trustee Counsel	Superior Court Misc Petition	CISTC
<input type="checkbox"/> Action Under Alaska Securities Act	Civil Superior Court	CISASA
<input type="checkbox"/> Other Superior Court Complaint	Civil Superior Court	CISOCI
<input type="checkbox"/> Other Superior Court Petition	Superior Court Misc Petition	CISPET
Post-Conviction Relief to Superior Court		
<input type="checkbox"/> Post-Conviction Relief	Post-Conviction Relief-Sup Ct	CISPCR
Appeal to Superior Court - From Administrative Agency		
<input type="checkbox"/> Election Contest or Recount Appeal – SEE OTHER CIVIL		
<input type="checkbox"/> DMV Appeal	Appeal from Admin Agency	CIADDMV
<input type="checkbox"/> Employment Security Appeal	Appeal from Admin Agency	CIADRESA
<input type="checkbox"/> Administrative Agency Appeal - Other	Appeal from Admin Agency	CIADR
<input type="checkbox"/> CSSD License Review Action	Petition for Review or Relief	CISED
<input type="checkbox"/> Petition for Review from Administrative Agency	Petition for Review or Relief	CIPRA
<input type="checkbox"/> Petition for Relief from Administrative Agency – AS 44.62.305	Petition for Review or Relief	CIPRLF
Appeal to Superior Court - From District Court		
<input type="checkbox"/> Civil Appeal	Appeal from District Court	CIACI2
<input type="checkbox"/> Criminal Appeal	Appeal from District Court	CIACRM
<input type="checkbox"/> Minor Offense Appeal	Appeal from District Court	CIAMO
<input type="checkbox"/> Small Claims Appeal	Appeal from District Court	CIASC
<input type="checkbox"/> Petition for Review from Civil, Criminal, or Minor Offense Case	Petition for Review or Relief	CIPRD2
<input type="checkbox"/> Petition for Review from Small Claims	Petition for Review or Relief	CIPRSC

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Anchorage, AK 99503

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RETURN RECEIPT REQUESTED

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USAA Federal Savings Bank
c/o CSC - Lawyers Incorporating Service Company
Registered Agent
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*Restricted
Delivery*

THU 23 JAN 2020 PM
Anchorage FSDC 99503